

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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RAYMOND JOSEPH ROBINSON #233894,

Plaintiff,

v.

DAVE J. BURNETT,

Defendant.

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Case No. 1:07-cv-668

HONORABLE PAUL L. MALONEY

**Order**

**Revising Dates set in January 9, 2009 Order**

In March 2008 this court dismissed without prejudice as to deputy warden Gidley, assistant deputy warden Krick, and J. Armstrong, for failure to exhaust administrative remedies.

When Robinson was released from prison, he filed a notice of change of address on March 17, 2008. *See* Doc #37. On May 22, 2008, the court issued a CMSO, *see* Doc. #38, which the Clerk mailed to Robinson's address of record; the post office did not return it as undeliverable.

On September 10, 2008, defendant Burnett mailed a Notice to Robinson at that address, scheduling a deposition for September 24, 2008 in Jackson, Michigan. Burnett's counsel and a court reporter arrived at the time and place scheduled; Robinson did not appear, and counsel left after forty minutes. On October 6, 2008, Burnett moved to dismiss with prejudice as a Rule 37 sanction. Robinson did not respond or seek an extension of time. By opinion filed January 9, 2009, this court granted Burnett's motion in part: after dismissing the complaint *without* prejudice, the order set deadlines for Robinson to take action to prevent the dismissal from ripening into a *with*-prejudice

dismissal. *See* Doc #44. Inadvertently, the Clerk's Office did not mail the January 9 Opinion to Robinson until January 28. Accordingly, the court will move each deadline three weeks later.

**This court's January 9, 2009 Order is amended only to insert the two underlined dates:**

**The plaintiff MAY FILE a notice, no later than Friday, February 27, 2009**, which does the following: (1) show good cause for his failure to attend his own deposition on September 24, 2008; (2) show good cause for his failure to contact the court or opposing counsel in connection with the deposition; and (3) explain how the defendant's envelope postmarked September 8, 2008 was returned as undeliverable while the defendant's envelope postmarked September 10, 2008 was not.

If the plaintiff does not file such a notice, or if he files a notice which does not persuade the court, **the dismissal will automatically ripen into a with-prejudice dismissal on Monday, March 2, 2009 without further action from the court.**

This case remains **OPEN**.

This is not a final order, so it is not immediately appealable.

**IT IS SO ORDERED this 27<sup>th</sup> day of January 2009.**

/s/ Paul L. Maloney  
Honorable Paul L. Maloney  
Chief United States District Judge